Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 5th December, 2007 (Agrahayana 14, 1929)

SERIES II No. 35

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/764

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 18-06-2007 in reference No. IT/11/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 30th July, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, AT PANAJI

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/11/2003

Workmen, represented
by President,
Mumbai Mazdoor Sabha,
Kennedy House, 4th Floor,
Goregaonkar Road,
Mumbai–400007. … Workman/Party I

v/s

1) M/s. Syngenta India Ltd.,
Santa Monica Works,
Corlim, Ilhas, Goa. … Employer/Party II

2) M/s. Safe (X) Services,
c/o Raju C. Mistry,
J-2 Navketan,
St. Inez, Campal,
Panaji, Goa. … Employer/Party II (a)

3) M/s. Super Services,
Dr. A. Borkar Road,
Opp. Goa Gas Service,
Panaji, Goa. … Employer/Party II (b)

Party I - represented by Adv. V. Menezes.

Party II - represented by Adv. C. V. Pawaskar.

Party II(a) & (b) - represented by Adv. A. V. Nigalye.

AWARD

(Passed on this 18th day of June, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. A factual matrix giving rise to the present reference, stated in narrow, Compass, is as follows:

The Government of Goa in exercise of powers conferred on it by clause (d) of sub-section (1) of Section 10 of the said Act, 1947 under its order dated 7-3-2003 has referred to this Tribunal following dispute for adjudication:

(I) Whether, on the ground that the contract between M/s. Syngenta India Ltd., and M/s. Safe (X) Services, and M/s. Super Services is sham and bogus, the demand of Mumbai Mazdoor Sabha on behalf of workmen listed in Annexure to this Order, for extension of appropriate relief of either absorption or regularisation with consequential benefits is legal and justified, irrespective of their continuance in employment or not on the date of this reference and pending award on this reference.

(II) If not, to what relief, if any are they entitled ?

2. In response to notices, both the parties appeared in the Tribunal. The Party I presented its claim statement on 22-8-2003 at Exb. 11. It appears from the claim

statement that, the Party II is doing business of manufacturing dyes, pharmaceuticals, drugs, pesticides and chemicals in its factory situated at Corlim, Goa. It has employed near about 305 workmen and management staff. Previously, there was a company by name M/s. Hindustan Ciba Geigy Ltd., which was doing the same business at the same place. The company had employed all the workmen referred to above. The company is demerged into two companies by name (1) M/s. Syngenta India Ltd., i.e. Party II and (2) M/s. Ciba Specialities Chemicals (India) Ltd. These two companies took over all liabilities including workmen of the company M/s. Hindustan Ciba Geigy Ltd. The workmen whose names are shown in Annexure 'A' and Annexure 'B' attached with reference order dated 07-03-2003 are allotted to the Party II. These two sets of workmen who are 19 and 22, in number are employed to do gardening and cleaning/sweeping works respectively. According to workmen (Party I) considering nature of business which the Party II is doing, it is necessary for the Party II to maintain clean and dust free environment. The works which were being done by them are of perennial nature. They are in continuous service without break with Party II right from their employment which was with original company M/s. Hindustan Ciba Geigy Ltd. The Party II has shown them contracts labours. Their employment is continued without break irrespective of change in contractors. There was direct supervision and control over their work by the Party II. They are persistently treated as contract labours doing gardening and cleaning/sweeping works under contracts entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other, without granting status of permanency and continuity in the service with a view to deny benefits of permanent employees. It is unfair labour practice adopted by Party II. The contracts entered into by the Party II with the Party II(a) on the one hand and with Party II(b) on the other, are sham and bogus. The workmen (Party I) were previously members of the Union Kamgar Sabha. Inspite of repeated demands by this Union, neither the employer/Party II nor Government of Goa regularized services of the workmen (Party I) as permanent employees, with full consequential benefits. The Union Kamgar Sabha filed Writ Petition bearing No. 34/97 in the Honourable High Court of Bombay at Goa with a prayer to regularise services of the workmen (Party I) as permanent employees of the Party II. The Hon'ble High Court by order dated 18-9-2002 dismissed the Writ Petition with directions to Government of Goa to consider demands of the Union within two months of receipt of the application, and to Tribunal to dispose of the reference within a year from receipt of the same, in the event if it is made. The Union Kamgar Sabha of which the workmen (Party I) were members is merged into the Mumbai Mazdoor Sabha on 16-12-1999. Since then, the Mumbai Mazdoor Sabha is representing all the workmen (Party I). Pursuant to the direction, given by the Hon'ble High Court in Writ Petition No. 34/97 the Union Mumbai Mazdoor Sabha raised dispute on 1-10-2002 before Secretary, Department of Labour and Industries, Government of Goa, Panaji, Goa, stating that:

(a) the contract entered into by M/s. Syngenta India Ltd., i.e. the Party II with M/s. Safe (X) Services i.e. the Party II(a) and M/s. Super Services i.e. Party II(b) in regard to employment of gardeners and sweepers for the factory premises is sham and bogus;

(b) the contract entered into by M/s. Ciba Speciality Chemicals Ltd., with M/s. Safe (X) Services i.e. the Party II(a) and with M/s. Super Services i.e. Party II(b) in regard to employment of gardeners and sweepers in the factory premises is sham and bogus;

(c) the workmen employed as gardeners and sweepers are entitled to be absorbed as regular workmen of M/s. Syngenta India Ltd., i.e. Party II and of Ciba Speciality Chemicals (I) Ltd., w.e.f. 30-1-1997;

(d) the contract workmen engaged for gardening and sweeping works are even otherwise entitled to regularization due to long and continuous service and on perennial nature of work;

(e) action of the management of M/s. Syngenta India Limited (Party II) and M/s. Ciba Speciality Chemicals India Ltd., in continuing to employ the workmen as contract workmen for doing the works of gardening and sweeping is unfair labour practice under item 10 of Fifth Schedule provided in the said Act, 1947. Management of M/s. Syngenta India Limited (Party II) and of Ciba Speciality Chemicals (India) Limited should be directed to stop the contract and to absorb the contract workmen w.e.f. 30-1-1997 with all consequential benefits as regular workmen and lastly;

(f) the workmen after regularization are entitled to fitment.

The contractors illegally terminated services of the workmen (Party I) w.e.f. 31-12-2002. The termination is separately challenged which is pending in conciliation. The Government of Goa by order dated 7-3-2003 has referred to this Tribunal for adjudication the dispute as stated earlier. The Party I by presenting claim statement prayed for holding that the contracts between Party II and Party II(a), Party II(b) are sham and bogus, that, the act of the Party II treating the workmen as contract labour is an unfair labour practice, and for direction to Party II to grant the workmen permanent status by regularizing/absorbing their services w.e.f. 30-1-97 with consequential benefits and proper fitment.

3. The Party II by filing its written statement on 2-9-2003 at Exb. 15, resisted the claim statement of workmen (Party I). It appears from written statement

that the workmen (Party I) are not employees of the Party II. There is no relationship as employees and employer and also there is no industrial dispute between the two. There is no legal obligation on Party II to maintain garden. The Party II is maintaining garden only for beautification of its factory premises. The gardening work is not necessary for the business which the Party II is running. Such work is not of perennial nature. The workmen are doing such work intermittently in factory premises and in housing colony of Party II. So far cleaning/sweeping work is concerned, only 3 to 4 workmen are sufficient to do this work. Only some part of the day is sufficient to maintain factory premises clean. Party II(a) and Party II(b) are professional contractors in gardening and cleaning/sweeping works. These two contractors came to be introduced as contractors by the Party II for the first time in the years 1986 and 1989 for gardening and cleaning/sweeping works respectively. Terms and conditions regarding the gardening & cleaning/sweeping works are specifically and elaborately embodied in the respective contracts. The workmen (Party I) were employees of these contractors. They were covered by the contractors under provisions of the Employees State Insurance Act, The Employees Provident Fund Act, the Payment of Gratuity Act and under Minimum Wages Act. The contractors had full control and supervision over the workmen (Party I). The contracts are genuine and not sham or bogus. The contracts and services of the workmen are terminated by their respective contractors. Question of treating the workmen (Party I) on par of regular employees does not arise. There are 310 workmen employed by Party II. The Union Mumbai Mazdoor Sabha represents only 58 workmen out of 310. It follows that, the Union is representing minority of the workmen. Therefore, this Union is not competent to raise dispute on behalf of the workmen (Party I). Provisions of the Contract Labour (Regulation and Abolition) Act are applicable. On these and above grounds, the Party II entreated for dismissal of the reference with cost.

4. Party II(a) submitted its written statement on 16-9-2003 at Exb. 13 in answer to the claim statement. This party at the very outset challenged maintainability of reference on grounds that, there is no existing or apprehended dispute between it and Party II, that, there was no demand by workmen or on their behalf to it either directly or through Conciliation Officer, that, the Union Mumbai Mazdoor Sabha has no locus standi to espouse dispute on behalf of workmen and to represent them in reference, that there was no subsisting contract between it and Party II on date of reference, and that, the Tribunal has no jurisdiction to entertain and to decide the reference.

5. Averments in written statement (Exb. 13) further speak that the Party II(a) is professional contractor in gardening work. In or about year 1986, Party II(a) came to know that the Party II is in need of contractor for doing such work. Therefore, Party II(a) approached Party II. After mutual discussions and negotiations a written contract took place between the two. The contract is renewed from time to time on agreed terms and conditions. It was job contract and not a contract for supply of labours. The Party II(a) was making payment of wages to the workmen, was supervising over work done by them and it had absolute and ultimate control over the work done by them. The contract is discontinued and services of workmen are terminated w.e.f. 31-12-2002 by Party II(a) by making payments of notice pay and of retrenchment compensation. These workmen were not employees of Party II. The contract in respect of gardening work is genuine. The workmen (Party I) have no right to claim regularisation and absorption in service with Party II. On these and above grounds the Party II(a) entreated for holding that the workmen (Party I) are not entitled to any relief from it.

6. The Party II(b) presented its written statement on 16-9-2003 at Exb. 14 and thereby combated the statement of claim. At the very outset, the Party II(b) also challenged maintainability of the reference on grounds that, there is no industrial dispute between it and Party II, that, there was no demand by workmen (Party I) either directly or through conciliation officer, that, the Mumbai Mazdoor Sabha has no locus standi to espouse dispute on behalf of workmen (Party I) and to represent them in reference, that, there was no subsisting contract between it and the Party II on the date of reference, and that, the Tribunal has no jurisdiction to entertain and to decide the reference.

7. Further, it appears from written statement (Exb. 14) that the Party II(b) is a professional contractor in cleaning work. The Party II(b) came to know in or about year 1989 that the Party II is in need of contractor for such work. Therefore, the Party II(b) approached Party II. After mutual discussions and negotiations, a written contract in respect of cleaning work took place between the two. This contract came to be renewed from time to time on agreed terms and conditions. It was job contract and not contract for supply of labour. The Party II(b) was making payment of wages to the workmen, was supervising over work done by them, and it had absolute and ultimate control over the workmen. The contract is discontinued w.e.f. 31-12-2002 and services of workmen are terminated by making payments of retrenchment compensation by Party II(b). These workmen were not employees of Party II. The contract in respect of cleaning work was genuine. The workmen (Party I) have no right to claim regularization and absorption in service with Party II. On these and above grounds Party II(b) has prayed for holding that the workmen (Party I) are not entitled to any relief from it.

8. Workmen (Party I) filed Rejoinder on 26-9-03 at Exb. 15. Averments in the rejoinder are more or less the same with those which are in their claim statement. Further, they have denied contentions which are raised by the Party II, Party II(a) and by Party II(b) in their written statements, and which are adverse to them.

9. On basis of pleadings of the parties, the then learned Presiding Officer framed issues on 3-10-02 at Exb. 16. The issues are as follows:

1. Whether the Union/Party I proves that it has the locus standi to espouse the dispute on behalf of the workmen and represent them in the reference ?
2. Whether the Union/Party I proves that the contract between the Party II - M/s. Syngenta India Ltd., and Party II(a) M/s. Safe (X) Services and Party II(b) M/s. Super Services is a sham and bogus contract ?
3. Whether the Union/Party I proves that the workmen in the present reference are entitled for absorption or regularization by the Party II M/s. Syngenta India Ltd., with consequential benefits ?
4. Whether the Party II M/s. Syngenta India Ltd., proves that there is no industrial dispute between them and the Union/Party I because workmen in the reference are not their employees ?
5. Whether the Party II – M/s. Syngenta India Ltd., proves that the reference is not maintainable because the contract is terminated and workmen are not in employment of Party II(a) and Party II(b) ?
6. Whether the Party II (a) M/s. Safe (X) Services and Party II(b) M/s. Super Services prove that the reference is not maintainable for the reasons stated in para 1(a), 1(b) and 1(d) to 1(i) of the written statement ?
7. Whether the workmen in the present reference are entitled to any relief ?
8. What Award ?

10. My findings on the above issues are as follows:-

1. In affirmative
2. In negative
3. In negative
4. In negative
5. In negative
6. In negative
7. In negative
8. As per final order.

REASONS

11. *Issue No. 1:* Annexure 'A & B' are alongwith order of the reference dated 7th of March, 2003. Annexure 'A' consists names of 19 workmen, while there are names of 22 workmen in Annexure 'B'. These two sets of workmen (Party I) were doing gardening and cleaning/ /sweeping works under so called contracts which are entered into by Party II with Party II(a) on one hand and with Party II(b) on the other hand, respectively. It has come in evidence of R. V. Joshi who is examined by Party I at Exb. 22, that, earlier the workmen (Party I) were members of Union Kamgar Sabha. This Union is amalgamated into Mumbai Mazdoor Sabha on 16-12-1999. Since then, the workmen (Party I) are members of Mumbai Mazdoor Sabha.

12. The Party I has produced xerox copy of Writ Petition No. 34/97 at Exb. W-3. The Writ Petition was filed by the Union Kamgar Sabha on behalf of the workmen (Party I) in the Hon'ble High Court of Bombay at Goa, with a prayer to regularize services of the workmen as permanent employees, and for some other reliefs. Exhibit 'A' containing names of 27 workmen, and Exhibit 'B' containing names of 19 workmen are with xerox copy of the Writ Petition. Out of 27 workmen, names of 22 are in the Annexure 'B' while names of all 19 workmen from Exhibit 'B' are finding place in Annexure 'A' which are with reference order dated 7-3-2003. These circumstances clearly support evidence of the witness R. V. Joshi that the workmen (Party I) were members of the Union Kamgar Sabha.

13. Xerox copy of certificate of registration of Trade Union is at Exb. W-1. The xerox copy makes it clear that the Union Kamgar Sabha has been amalgamated with Mumbai Mazdoor Sabha on 16-12-99. This development has taken place during pendency of the Writ Petition No. 34/97 in the Hon'ble High Court Bombay at Goa. Pursuant to direction given by the Hon'ble High Court under order dated 18-9-2002, dispute was raised by the Union on behalf of all employees including workmen on 1-10-2002, and that Union is Mumbai Mazdoor Sabha. All these facts are also pointer of fact that since after amalgamation the workmen (Party I) became members of Mumbai Mazdoor Sabha. I accept evidence of the witness R. V. Joshi in this regard.

14. Learned Advocate appearing on behalf of workmen (Party I) argued that the Union Mumbai Mazdoor Sabha is representing all employees including workmen (Party I) of the Party II M/s. Syngenta India Limited. Therefore, according to him, the Union Mumbai Mazdoor Sabha is entitled to espouse dispute on behalf of the workmen and to represent the workmen in reference. He relied upon decision given by Hon'ble High Court of Judicature, Rajasthan (at Jodhpur) in case of Railway Employee's Co-operative Credit Society Ltd. (Jodhpur Division) and Industrial Tribunal, Rajasthan, Jaipur & others, reported in 1963 II LLJ 193. In this reported case there was reference of industrial dispute in regard to some workmen employed by a Railway Co-operative Credit Society. They were members of the union of Railway Employees. Under the bye-laws of the Union, the concerned employees were not eligible to become its members. The Hon'ble High Court of Rajasthan (at Jodhpur) held that:

> *"Even assuming that under Section 36(1)(a) of the Industrial Disputes Act, the union could*

not represent the cases of the employees of the Society, it is difficult to escape the provision of Sec. 36(1)© of the Industrial Disputes Act which clearly applied to the instant case. The four employees may not even be the members of the union still they can be represented by it for the reasons that the Society and the Union are both parts of the same industry, namely, transport, and both are functioning under the patronage of the same Railway. There is, thus, a clear connection between the Union and the Society and the said connection also related to the employees of the Railway and the employees of the Society. The union is thus, competent to represent the case of the employees of the Society by virtue of Sec. 36(1)© of the Industrial Disputes Act."

15. Learned Advocate of Party II assailed argument of learned Advocate representing the workmen (Party I) on the ground that there is difference between raising of dispute and representing workmen by the Union. Even for the sake of argument assuming that the Union is entitled to represent the workmen, according to him, the Union is not entitled to raise dispute on behalf of the workmen. He restricted his argument only in respect of question as to whether the Union can raise dispute on behalf of the workmen. "Section 36(1) of the said Act, 1947 lays down that:

"A workman who is a party to the dispute shall be entitled to be represented in any proceeding under this Act by—

(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) [any member of the executive or other office bearer] of a federation of a trade unions to which a trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed."

16. The Hon'ble High Court of Bombay at Goa under order dated 18-9-2002 passed in Writ Petition No. 34/97 pleased to allow the then Union Kamgar Sabha to make an appropriate representation to the State Government of Goa with regard to the dispute. This Union, as stated earlier, is amalgamated into Mumbai Mazdoor Sabha. Pursuant to order dated 18-9-2002 the Mumbai Mazdoor Sabha has raised dispute before the Secretary, Department of Labour & Industries, Government of Goa. Therefore, the argument advanced by learned Advocate of Party II that the Union Mumbai Mazdoor Sabha is not entitled to raise the dispute, cannot be entertained. I am unable to agree with his argument. I hold that the Union Mumbai Mazdoor Sabha is entitled to raise the dispute on behalf of the workmen (Party I).

17. So far question of representation of the workmen (Party I) by the Union Mumbai Mazdoor Sabha is concerned, the representation is challenged by the Party II in para No. 7 of written statement (Exb. 15). Contentions raised in this para show that there are 310 workmen with the Party II. The Union Mumbai Mazdoor Sabha is representing only 58 workmen out of 310. The Union is not representing majority of the workmen. Therefore, this Union is not competent to represent the workmen (Party I). Sec. 36(1) of the said Act, 1947, does not place such hurdle in the way of the Union. The contentions raised by Party II are for sake of contentions which are devoid of merits.

18. Section 36(1)(a) of the said Act, 1947 entitles workman who is a party to dispute to be represented in any proceeding under this Act, by any member of the executive or other office bearer of a registered trade union of which he is a member. The entitlement is not only in respect of raising dispute or of representation but in respect of any proceeding under the said Act, 1947. The Union Mumbai Mazdoor Sabha is duly registered of which the workmen (Party I) are members. They are certainly entitled to be represented by the Union in raising dispute as well as in the reference. Even for the sake of arguments assuming that they are not members of the Union, relying upon decision given by the Hon'ble High Court of Rajasthan (at Jodhpur) in case of Railway Employees Co-op. Credit Society Ltd., …reported in 1963 II LLJ 193 and considering provisions of Sec. 36(1)(c) of the said Act 1947, I hold that the workmen (Party I) are entitled to be represented by the Union Mumbai Mazdoor Sabha as stated above. My answer to the issue is in affirmative.

19. *Issue No. 2:* M/s. Hindustan Ciba Geigy Ltd., had entered into contracts whereunder Party II(a) was entrusted with work of maintenance of lawns and gardens in its Santa Monica Plant and Housing Colony at Corlim, Goa. Xerox copies of the contracts are produced on record. These contracts were for periods from 10-10-86 to 9-10-87 (Exb. W-13), from 31-12-89 to 31-12-91 (Exb. E-12), from 1-1-92 to 31-12-92 (Exb. E-13), from 1-1-94 to 31-12-96 (Exb. E-14) and from 1-1-97 to 31-12-97 (Exb. E-15).

20. The said Hindustan Ciba Geigy Ltd., had entered into contracts whereunder Party II(b) was entrusted with work of cleaning surrounding area, roads around factory premises and of extending janitorial services in its factory premises. Xerox copies of the contracts are on record. These contracts were for periods from 1-11-89 to 31-12-90 (Exb. W-20), from 1-1-91 to 31-12-91 (Exb. E-7), from 1-1-92 to 31-12-92 (Exb. E-7), from 1-1-93 to 31-12-93 (Exb. E-7), from 1-1-94 to 31-12-96 (Exb. E-8) and from 1-1-97 to 31-12-97 (Exb. E-9).

21. The witness R. V. Joshi examined by Party I disclosed in his evidence that the company

M/s. Hindustan Ciba Geigy Ltd., is demerged into two companies by name (1) Novartis India Ltd., and (2) M/s. Ciba Speciality Chemicals Ltd. The Party II M/s. Syngenta India Ltd., has taken over the company Novartis India Ltd.

22. It is evident that the Novartis India Ltd., entered into contracts whereunder Party II(a) was entrusted with work of maintenance of lawns and gardens in and around its factory premises in Santa Monica Plant at Corlim, Goa. Xerox copies of the contracts are on record. These contracts are for periods from 1-1-98 to 31-12-98 (Exb. E-16), 1-1-99 to 31-12-99 (Exb. E-16) and for period from 1-1-2000 to 31-12-2000 (Exb. E-16).

23. The said Novartis India Ltd., had entrusted work of cleaning surrounding area, road around the factory premises and housing colony situated at Corlim, Goa with Party II(b) under contracts. Xerox copies of these contracts are on record. Contract for the period from 1-1-98 to 31-12-98 is at Exb. 10, while remaining two contracts for periods from 1-1-99 to 31-12-99 and from 1-1-2000 to 31-12-2000 are at Exb. 11, colly.

24. The Party II entered into contracts and entrusted with the Party II(a) work of maintenance of lawns and gardens in its Santa Monica Plant at Corlim, Goa. Xerox copies of the contracts for period from 1-1-2000 to 31-12-2000 and from 1-1-2001 to 31-12-2001 are at Exb. W-13 and Exb. E-16 respectively. The Party II entered into contracts whereunder Party II(b) was entrusted with work of cleaning surrounding area, roads around factory premises and housing colony situated at Corlim, Goa. Xerox copies of these contracts which were for periods from 1-1-2001 to 31-12-2001 and from 1-1-2002 to 31-12-2002 are at Exb. 11, colly.

25. The contracts referred to above prima facie go to show that initially M/s. Hindustan Ciba Geigy Ltd., then Novartis India Ltd., and then M/s. Syngenta India Ltd., i.e. Party II was getting gardening and cleaning works done through the respective contractors. Only those contracts which are entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other, are challenged by the workmen (Party I). It has come in evidence of R. V. Joshi, the witness of Party I that the Party II which manufactures dyes, chemicals, pesticides, herbicides and pharmaceuticals, works in three shifts, each of 8 hours. The Party II was in need of getting gardening and cleaning/sweeping works done to maintain clean and dust free atmosphere because dust can act as contaminent in process of manufacturing such products. The gardening and cleaning/sweeping works are of perennial nature. The gardening work includes maintenance of lawns, various plants and replantation and replenishment of trees, while cleaning/sweeping work includes cleaning of floor, machines, glasses, toilets, bathrooms etc. C. J. Fernandes and Mahatme who were clerk and Executive, respectively, and after their retirement Navati and R. L. Cardozo were supervising gardening and cleaning/sweeping works, on behalf of Party II. Tools and materials which were required for gardening and cleaning/sweeping works were supplied by the Party II. The workmen (Party I) were continuously working without break inspite of change in contractors. The contracts entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other, are sham and bogus.

26. In support of its case, the Party I further examined witnesses, Tulshidas Gaonkar at Exb. 23 and A. S. Ghadi at Exb. 24. The witness Tulshidas Gaonkar was working as a sweeper from 10-2-92 to 31-12-2002, the date of termination of his services; without break in service. He has explained nature of the work which he was doing as a sweeper. Remaining witness A. S. Ghadi was doing gardening work since year 1978 without break till his service came to be terminated on 31-12-2002. He has also explained nature of work which he was doing.

27. Evidence of witness R. V. Joshi supported by the above mentioned two witnesses goes to show that, the workmen who were engaged to do gardening and cleaning works were doing their respective works continuously and without break till services of the workmen came to be terminated w. e. f. 31-12-2002, that, the works were being supervised by officers of the Party II, and that, tools and materials required for such works were being supplied by the Party II.

28. Witnesses R. P. Rataboli, Rudolf Cardozo and Venkatesh Navati are examined by Party II at Exb. 25, Exb. 26 and Exb. 27 respectively. Witness R. P. Rataboli is serving as retainer, witness Cardozo is Administrative Manager, while the remaining witness Navati is working in Administrative Department of Party II. Cumulative effect of their evidence is that there was no supervision done by workmen, that, the materials and tools required for the said works were never supplied by Party II, that, the said works are not of perennial nature, that, the workmen were employees of their respective contractors, that, there was direct supervision of the contractors over the works done by their respective workmen, that, the contractors had covered their workmen under Employee's State Insurance Act and Provident Fund Act, and that, the contracts entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other, are genuine.

29. Learned Advocate appearing on behalf of Party I elaborately argued that if evidence led by Party I is taken into consideration, it clearly emerges therefrom that, the workmen (Party I) were continuously doing gardening and cleaning/sweeping works, without break right from time of M/s. Hindustan Ciba Geigy Ltd., till their services came to be terminated on 31-12-2002, that, there was direct control and supervision of the Party II over the works done by workmen, that, the materials and tools required for the said works were being supplied by Party II and that the said works are of perennial nature. He further pointed out that the payment which is made to workmen by the contractors is reimbursed by Party II. All these

circumstances, in his opinion, hit nail on head that the workmen are direct employees of the Party II, and therefore, there is relationship of employees and employer between the two.

30. Next contention which is pressed into service by learned Advocate of Party I is that even though there is relationship of employees and employer between workmen and Party II, the workmen are purposely treated as contract labour under the contracts which are entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other. It is with oblique motive to defeat rights of the workmen of getting their services regularised and of receiving all benefits on par of permanent employees. Therefore, according to him, such contracts are sham and bogus.

31. Argument advanced by learned Advocate of Party I can conveniently be divided in two parts. First part relates to relationship between workmen and Party II, while the second part of his argument touches to the contracts which, according to him, are sham and bogus. So far the first part of his argument is concerned he relied upon decisions from various reported cases which I am going to refer.

32. In case of Husseinbhai Calicut....Petitioner v/s The Alath Factory Thezhilali Union. Kozhikode and others.....Respondents, reported in (1978) 4 SCC 257, the Petitioner was a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the Petitioner to get such works done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the Petitioner but only of the contractor. The Hon'ble Supreme Court held that:

> *"The facts found that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner."*

33. In case of Indian Petrochemicals Corporation Ltd., and another .....Appellants v/s Shramik Sena and Others .....Respondents, reported in (1999) 6 SCC 439, the respondent workmen were employed in the statutory canteen (maintained in compliance with Section 46 of Factories Act) in the appellant's establishment. The canteen was managed by contractor. The said workmen filed Writ Petition before the Hon'ble High Court to seek a declaration that they were regular workmen of the appellant's establishment with right to pay scales and service conditions applicable to regular workmen. They further sought a direction to appellant to absorb them with effect from the date of their entry in the service of the canteen and to pay them all consequential benefits. The appellant opposed the workmen's claim. The Hon'ble High Court directed the appellants to absorb the workmen in employment with certain conditions. The matter went upto the Hon'ble Supreme Court. It was established by way of affidavits and the contracts entered into between the management and the contractor that:

a) the canteen has been there since the inception of the appellant's factory;

b) the workmen have been employed for long years and despite a change in contractors the workers have continued to be employed in the canteen;

c) the premises, fixtures, furnitures, fuel, electricity, utensils etc., have been provided for by the appellant;

d) the wages of the canteen workers have to be reimbursed by the appellant;

e) the supervision and control on the canteen is exercised by the appellant through its authorized officers, as can be seen from various clauses of the contract between the appellant and the contractor;

f) the contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant;

g) the workmen have the protection of continuous employment in the establishment.

Considering all the above factors cumulatively in addition to the fact that the canteen is the establishment of the Management is a statutory canteen, the Hon'ble Supreme Court held that the respondent workman are in fact the workmen of the appellant management.

34. In case of Indian Overseas Bank v/s I. O. B. Staff Canteen Workers Union and Anr, reported in JT 2000(4) SC 503, question of relationship of 33 canteen workers of Indian Overseas Bank staff canteen with management was involved. The Industrial Tribunal considering facts that:-

a) the canteen is in the premises of the Bank;

b) the canteen is for the exclusive use of the staff of the Bank;

c) the working hours and days of the bank;

d) the Bank provided infrastructure like furniture, utensils, refrigerators, water coolers

apart from meeting cost of gas, electricity and water;

e) the cost of the materials were met and wages for the workmen are also met only from the funds provided by the Bank;

f) neither the workers nor the Managing Committee contributed either to the capital or the expense for running the canteen;

g) the Bank gave subsidy for supplying food articles to its employees at concessional rates;

h) cycles and tricycles were provided to the canteen for supply of food stuffs,

held that the employees of the canteen will have to be treated as the employees of the Bank. The management filed Writ Petition challenging the Awards passed by the Industrial Tribunal. Hon'ble Single Judge of Madras High Court by order dated 8-3-96 quashed the impugned Awards. The Workers Union took up the matter on appeal before Hon'ble Division Bench of the High Court. The Hon'ble Division Bench set aside order of the Hon'ble Single Judge and restored Awards passed by Industrial Tribunal. Appeals were preferred to the Hon'ble Supreme Court against Judgement of the Division Bench of Madras High Court. The Hon'ble Supreme Court dismissed the appeals.

35. In case of Steel Authority of India Ltd., and others, Appellants v/s National Union Waterfront Workers & others, Respondents, reported in (2001) 7 SCC 1, the appellants, a Central Government Company and its Branch Manager, were engaged in manufacture and sale of various types of iron and steel materials in its Plant located in various parts of India. The business of appellants includes import and export of several products and by-products through Central marketing unit of the appellants, having a network of branches in different parts of India. Work of handling the goods in the stockyards of appellants was being entrusted to contractors after calling for tenders in that behalf. The Government of Bengal issued notification dated 15-7-1989 under Section 10(1) of the CLRA Act, prohibiting employment of contract labour in four specified stockyards of the appellants. The Government kept in abeyance the said notification initially for a period of six months by notification dated 28-8-89 and thereafter extended that period from time to time. The Government did not extend period beyond 31-8-94. The first respondent Union representing the cause of 353 contract labour filed Writ Petition in Calcutta High Court seeking a direction to the appellants to absorb contract labour in their regular establishment in view of the notification issued u/s 10(1) of the CLRA Act on 15-7-89 and further praying that the notification dated 28-8-89 keeping the said notification dated 15-7-89 in abeyance be quashed. The Hon'ble High Court allowed the Writ Petition.

36. The Hon'ble Supreme Court held in the above reported case of Steel Authority of India Ltd., and others, that:-

> "Engagement of contract labour in connection with work entrusted to him does not culminate in emergence of master and servant relationship between the principal employer and the contract labour. Where workman is hired through a contractor, master and servant relationship exists. But where a workmen is hired in or in connection with work of an establishment to produce a given result or the contractor supplies workman for any work of the establishment, unless the contract is mere camouflage, the workman cannot be treated as an employee of the establishment.

37. In case of Ram Singh v/s Union Territory, Chandigarh, reported in (2004) 1 SCC 126, the appellants contract employees, who were trained electricians, employed for various jobs connected with the sub-station set up to supply electricity, claimed relief of regularization of their services under the Engineering Department of Chandigarh Administration on the ground that the work of maintaining supply of electricity being of a permanent and perennial nature, they should be directed to be directly employed by the administration. The claim was rejected by CAT. Petition filed under Art. 227 of the Constitution was also dismissed by the High Court. Hence, the appellants took up the matter by way of appeal before the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court in this case that:-

> *"In determining the relationship of the employer and employee, no doubt, "control" is one of the important tests but it is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant test. It is applied by examining whether the person was fully integrated into the employer's concern - or remained apart from an independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contribution, organize the work, supply tools and materials and what are the "mutual obligations" between them.*

38. The Hon'ble Supreme Court in case of Dharangadhra Chemicals Works Ltd., v/s State of Saurashtra and others reported in 1957 I LLJ 477 set out guiding principles to determine employer and employee relationship. These guiding principles are referred by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 182 of 2004 (M/s. Sesa Goa Limited v/s The

Mormugao Waterfront Workers Union and 3 others) decided on 29-10-2004. These guiding principles are:-

a) the test which is uniformly applied in order to determine the relationship is existence of right to control in respect of the manner in which the work is to be done and a distinction is also drawn between a "contract for services" and a "contract of service";

b) the prima facie test for determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work;

c) the nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition, and

d) the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

39. Learned Advocate for Party II in reply to argument advanced by learned Advocate of Party I, argued that the reference which is made by the Government of Goa is for adjudication of dispute. *"Whether on the ground that the contract between M/s. Syngenta India Ltd., and M/s. Safe (X) Services and M/s. Super Services is sham and bogus, the demand of Mumbai Mazdoor Sabha on behalf of workmen listed in Annexure to this Order, for extension of appropriate relief of either absorption or regularisation with consequential benefits is legal and justified, irrespective of their continuance in employment or not on the date of this reference and pending award on this reference.* There is no reference for adjudication as to whether contracts entered into by Party II with Party II(a) on one hand, and with Party II(b) on the other, are sham and bogus, and therefore, this Tribunal cannot decide nature of the contracts in dispute. He further argued that there is no pleading in claim statement in respect of grounds on which the contracts are claimed to be sham and bogus. Even though the workmen (Party I) were continuously in the works without break, that cannot be a sufficient ground to establish relationship of employees and employer between workmen and Party II. The workmen were under supervision and control of the contractors. Materials and tools required for the works were being supplied by the contractors concerned. The contractors were making payments to their respective workmen. Considering the nature of business which the Party II is doing, it cannot be said that the gardening and cleaning works are integral part of the business. The workmen Party I are not employees of the Party II. On the contrary the workmen were employed by their respective contractors to execute the works. The contracts which are in dispute are genuine contracts. He also relied upon decisions from reported cases which I am referring as follows:

40. In case of Hari Shankar Sharma and other, Appellants v/s M/s. Artificial Limbs Manufacturing Corporation and others, Respondents, reported in 2002 1 CLR 13, respondent No. 1 was a Government Company. It had set up a canteen for employees. Respondent No. 2 was a contractor who was running the canteen. Appellants were employed by several contractors. At the relevant time respondent No. 2 was contractor. Appellants raised an industrial dispute claiming to be regular workmen of respondent No. 1. Labour Court held appellants to be employees of contractor and not of Respondent No. 1 Appellants were unsuccessful also in the High Court. Hence there was appeal to the Supreme Court. It is held by the Hon'ble Supreme Court that on facts, appellant-employees cannot be termed as employees of management of respondent No. 1 and they are not entitled to any relief claimed by them.

41. In case of workmen of Nilgiri Co-operative Marketing Society Ltd., v/s State of Tamil Nadu and others, reported in 2004 LLR 351, dispute was raised by workmen including potters and graders working on daily wages, claiming permanency in service and other benefits. The Society was not a trading company. Some of the workmen had been more or less continuously working in particular premises. Question which arose was whether relationship between the parties is one of the employer and employee. The Hon'ble Supreme Court held that:-

> *"Merely because some persons had been more or less continuously working in a particular premises would not be construed that the relationship of employer-employee has come into existence since other circumstances would be relevant factors".*

42. The Hon'ble Supreme Court in the above mentioned reported case laid down essential ingredients for determining of concept of employment. The ingredients are:-

i) Employer-one who employs i.e. engages the services of other person;

ii) Employee-one who works for another for hire; and

iii) Contract of employment—the contract of service between the employer and the employee whereunder the employee agrees to serve the employee subject to his control and supervision.

43. In case of Haldiya Refinery Canteen Employees Union and others, Appellants v/s Indian Oil Corporation Ltd., and others, Respondents, reported in 2005

Supreme Court cases (L&S) 593; question of relationship of statutory canteen workmen with establishment maintaining such canteen is considered. Factory of respondent where workmen were employed was governed by provision of Indian Factory Act, 1948. Respondent management was exercising effective control over contractor of canteen on certain matters in regard to running of the canteen. Respondent management was not playing its part whatsoever in the employment contract, in setting its terms or in any incidents thereof per se, between the canteen contractor and its workmen. All obligations and concomitants of the employer under the said contract were being borne by the canteen contractor alone. There were two settlements between canteen contractor and its workmen before Assistant Labour Commissioner, to which respondent management was not a party. The Hon'ble Supreme Court held that:-

> *"Workmen working in the canteen became the workers of the establishment for the purpose of the Factories Act, only and not for any other purpose. They do not become the employees of the management for any other purpose entitling them to absorption into the service of the principal employer."*

44. Contention raised by learned Advocate of Party II that this Tribunal is not called upon to decide as to whether the contracts in dispute are sham and bogus, and therefore, this Tribunal cannot decide nature of the said contracts, goes to root of the issue. So, it is necessary to deal with the said contention first. It is true that under the present reference, the dispute as to whether the contracts entered into by Party II with Party II(a) and Party II(b) are sham and bogus, is not specifically referred for adjudication. What is referred for adjudication is that whether demand of Mumbai Mazdoor Sabha on behalf of workmen for extension of appropriate relief of either absorption or regularization with consequential benefits is legal and justified, on the ground that the contract between Party II and Party II(a) and Party II(b) is sham and bogus. Main relief claimed on behalf of the workmen is of absorption or regularization in service with consequential benefits. While deciding main dispute ancillary questions are also required to be dealt with. The Hon'ble Supreme Court held in case *of* Gujarat Electricity Board, Appellant v/s Hind Mazdoor Sabha and others, Respondents, reported in (1995) 5 Supreme Court Cases 27 that the Industrial Tribunal can adjudicate dispute raised by workmen of so called contractors for being declared to be employees of the principal employer on the ground that the contract was sham, only after coming to conclusion that the contract was sham. I, therefore, do not agree with the contention raised by learned Advocate of Party II. I hold that the question as to whether the contracts in dispute are sham and bogus will have to be decided before coming to conclusion in respect of prayer made on behalf of the workmen, for absorption or regularization in service with Party II, with consequential benefits.

45. Burden of proof for existence of relationship of employer and employee lies upon the person who sets up a plea of its existence. This position is made clear by the Hon'ble Supreme Court in case of workmen of Nilgiri Co-operative Marketing Society Ltd., reported in 2004 LLR 351. In the present case, such plea is raised by workmen (Party I). Therefore, it is for the workmen to prove existence of such relationship. They are claiming to be employees of the principal employer i.e. of the Party II on grounds that:

a) *they were continuously doing gardening and cleaning works without break right from time of M/s. Hindustan Ciba Geigy Ltd., till termination of their service w.e.f. 31-12-2002;*

b) *there was direct supervision and control of Party-II over works done by them;*

c) *materials and tools required for the said works were being supplied by Party II;*

d) *the said works which they were doing were of perennial nature, and lastly;*

e) *the payments which were being made to them by contractors are reimbursed by the Party II.*

46. It appears from list of workmen, 19 in number, engaged for gardening work and which is alongwith xerox copy of Certificate of registration of the trade union (Exb. W-1) that one of the workman was doing work from year 1974. One of the remaining workers was doing work from year 1977. Three of the remaining workmen were doing work from year 1978. One of the remaining workmen was doing work from year 1980. Two of the remaining workers were doing work from year 1981. One of the remaining workmen was doing work from year 1982. Nine of the remaining workmen were doing work from year 1988. Date from which remaining worker of Sr. No. 19 was working is not shown against his name. It is not in dispute that all these workmen were doing gardening work till 31-12-2002, i.e. till termination of their services.

47. The Company M/s. Hindustan Ciba Geigy Ltd., introduced the Party II(a) as contractor for gardening work for first time in the month of October, 1986. It follows that nine out of 19 workmen were doing gardening work since before the Party II(a) came to be introduced as contractor. There is no change in the contractor since after the month of October, 1986 till 31-12-2002.

48. The Company M/s. Hindustan Ciba Geigy Ltd., introduced Party II(b) as contractor for cleaning/ /sweeping work for first time in November, 1989. Since then, there is no change of contractor of cleaning/ /sweeping work till 31-12-2002. List of workmen, 22 in number, engaged for cleaning/sweeping work and which is alongwith certificate of registration of Trade Union (Exb. W-1) shows that except the workmen at Sr. No. 1, remaining 21 workmen were doing the work after introduction of Party II(b) as contractor. It is not in

dispute that these workmen, 22, in number were also doing work till 31-12-2002, i.e. till termination of their services.

49. There is no documentary evidence on behalf of the workmen (Party I) to show as to whether prior to the years 1986 and 1989, the works of gardening and cleaning/sweeping were being done through the contractors. There is also no documentary evidence to disclose names of those contractors, if any, who were doing such works prior to the years 1986 and 1989. If the dates of appointments which are shown against names of each of the workmen (Party I) and the fact that they were doing the gardening and cleaning works respectively, till the dates of termination of their services i.e. till 31-12-2002 are taken into consideration, evidence led by Party I that the workmen were continuously doing the said works without break in the services from dates of their respective appointments till the date of termination of their services, as rightly pointed out by their learned Advocate, appears to be probable, convincing and as such it can safely be accepted.

50. There is no independent corroboration to evidence of the witnesses examined by Party I to prove that there was supervision and control of officers of the Party II over the gardening and cleaning works done by the workmen (Party I). Witnesses examined by Party II have denied in clear terms in their respective evidence that there was such supervision or control by officers of the Party II. Therefore, in absence of independent corroboration, I hold that, it will not be proper and correct to believe and to accept evidence led by Party I.

51. Witness R. L. Cardozo examined by Party II admitted in his cross examination that he was giving instruction to the workmen in relation to gardening and cleaning works, and that, sometimes he was checking the works done by the workmen. This admission is used by learned Advocate of Party I to prove that there was control and supervision of Party II over the said works. Though there was such exercise by this witness, it was to ensure that the gardening and cleaning works are carried out by the workmen properly. This however, does not mean that the workmen became the employees of the Party II.

52. There is also no independent evidence in support of that of the witnesses examined by Party I to prove that, tools and materials required for the gardening and cleaning works were being supplied by Party II. Witnesses examined by the Party II denied in their evidence that there was such supply by Party II. In absence of independent evidence, I hold that it will not be proper and correct to rely upon evidence of witnesses examined by Party I.

53. It appears from terms and conditions set out in contracts (Exb. E-16 and Exb. W-13) entered into between Party II and Party II(a) that it was the responsibility of Party II(a) to get gardening work done by deploying persons as he feels required. It follows that the Party II(a) contractor, was given free hand with regard to engagement of workmen to do gardening work. Terms and conditions set out in the said contracts further show that the Party II was under obligation to provide at its cost all gardening equipments and appliances such as lawn mowers, cycles etc. and that the Party II agreed to pay to the Party II(a) for manure, plants supplied by Party II(a) for gardening activities, against bills.

54. So far contracts entered into between Party II and Party II(b) in respect of cleaning/sweeping work are concerned (Exb. 11 colly), it appears from terms and conditions set out therein that the Party II(b) was responsible to provide at its own costs all materials, tools and appliances such as detergents, floor mops, brooms, soaps and the like required for cleaning/ /sweeping work, that, employees engaged for this work were of the Party II(b), and that, the Party II(b) was to ensure compliance with all terms and conditions of the contracts through its own supervisor.

55. If terms and conditions set out in the contracts which were for gardening and cleaning works and which are stated above are taken into consideration, on that count also, evidence of the witnesses examined by Party I to prove that there was direct supervision and control of the Party II over works done by workmen, and that all materials and tools required for gardening and cleaning works were supplied by the Party II, cannot be accepted. I, therefore, hold that the Party I failed to prove these two conditions/requirements which are essential to establish relationship of workmen as employees of the Party II.

56. In case of Husseinbhai Calicut, reported in (1978) 4 Supreme Court Cases 257, factory owner was dealing with manufacturing ropes. Workmen who were engaged through contractors, were to make ropes. Work done by workmen was integral part of the industry. In case of India Petrochemicals Corporation Ltd., and another, reported in (1999) 6 Supreme Court Cases 439, workmen were of statutory canteen managed by contractor on behalf of establishment. In case of Indian Overseas Bank reported in JT 2000 (4) SC 503, workmen were of canteen attached to establishment. In case of Steel Authority of India Ltd., reported in (2001) 7 SCC 1, workmen who were contract labour and on whose behalf dispute was raised by union, were engaged to do work of handling goods in stockyards of the said company. In case of Ram Singh and others reported in (2004) 1 SCC, 126, contract employees were employed in the sub-station to maintain supply of electricity. In case of M/s. Sesa Goa Ltd. (Writ Petition No. 182.2004, decided on 29-10-2004) Respondent No. 2 was engaged by the company for looking after the complete transhipping activities of the vessel. Workmen were engaged by Respondent No. 2 on the vessel. Thus, from all these reported cases, it can be seen that the workmen were engaged for or in connection with the works which their respective establishments were carrying on. In the present case, Party II is running business of manufacturing dyes, pesticides, pharmaceuticals,

chemicals, while the workmen (Party I) were doing gardening and cleaning works. To this extent, facts of the above mentioned reported cases are different from that of the present one. I, therefore, with respect hold that these reported cases are not applicable to the present case to hold that the gardening and cleaning works is integral part of the Party II. Such works are only with a view to maintain clean, healthy and beautiful atmosphere in factory and factory premises and those are not integral part of the Party II. I, therefore, hold that the gardening and cleaning works though prima facie appears to be of perennial nature, those are not perennial having regard to manufacturing business of or integral part of the Party II.

57. The Party II under the contracts agreed to pay lumpsums per month to the contractors in consideration of services rendered and responsibilities and obligations undertaken by the contractors. In addition the Party II agreed to pay to the contractor of gardening work, for the manure and plants supplied by the contractor for gardening activities against the bills. This does not mean that the payments which were being made to the workmen (Party I) by the contractors are reimbursed by Party II. There is no sufficient and convincing evidence on behalf of Party I to prove that the payment made to the workmen by the contractors are reimbursed by the Party II. I, therefore, do not accept evidence led by Party I and with argument advanced by its learned Advocate in this regard.

58. The grounds except that of continuity of the workmen in service without break are not proved by the Party I. Only continuity in services, as decided by the Hon'ble Supreme Court in case of workmen of Nilgiri Co-operative Marketing Society Ltd., reported in 2004 LLR 351, would not be construed that relationship of employer-employee has come into existence.

59. Though the workmen (Party I) were working continuously without break since before the years 1986, and 1989, there is no clause in the contracts in dispute that the contractors i.e. Party II(a) and Party II(b) were under obligation to retain and engage compulsorily the same workmen. The contractors have been made liable to comply with provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors made applicable to their respective workmen, provisions of Employees' State Insurance Act, Employees' Provident Fund Act and of Payment of Bonus Act. The contractors are made liable to comply with all other Rules and Regulations also, applicable to their respective workmen.

60. Another fact which is very important and which is pointed out by learned Advocate of Party II should be taken into consideration. The Goa Trade & Commercial Workers Union, the then representative of the workmen, by its letter dated 1-12-1992 had submitted charter of demands on behalf of the workmen to managements of Party II(a) and Party II(b). Settlements in respect of those demands are arrived at between the parties on 2-3-1995. Xerox copy of settlement arrived at between representatives of the workmen and Party II(a), and that of settlement arrived at between representatives of workmen and Party II(b) are at Exb. E-1, colly. The Party II is not a party to any of these two settlements. This clearly goes to show that the workmen were treating themselves to be the employees of the contractors and not that of the management. In this context, I rely upon decision given by the Hon'ble Supreme Court in case of Haldiya Refinery Canteen Employees Union and others reported in 2005 Supreme Court Cases (L&S) 593. The Party I did not prove all essential factors which are necessary and which are laid down in the reported cases, alluded Supra, to establish relationship of the workmen with Party II, as employees and employer. I do not accept case made out by the workmen that, they are employees of the Party II, and that therefore, there is relationship of employees and employer between them and the Party II.

61. Now coming to second part of argument advanced by learned Advocate of Party I, it is necessary to reiterate that he is claiming the contracts in dispute (Exb. E-16, Exb. W-13 and Exb. E-11 colly) as sham and bogus mainly on the grounds that the workmen (Party I) are direct employees of the principal employer i.e. of Party II, and that the workmen are treated as contract labour under the said contracts by Party II only with intention to keep away the workmen from status of permanency in the service and from getting consequential benefits on par of permanent employees. In case of Ahmedabad Electricity Co. Ltd., v/s Electricity Mazdoor Sabha reported in 1998 II CLR 820, the workmen were doing work connected with activities of the company. Evidence on the record was showing that the work which was being done was of perennial nature to be done continuously and without any interruption, that, the petitioner company was making lot of profit in its business, that, part of rise in the profit was on account of denial of due wages to the workmen, that, inspite of having continuous and regular work as well as financial capacity to regularize the workman and to pay them wages the company treated the workmen as contract labour and though the company was having 100 vehicles it was having only three regular drivers on its establishment. Considering all these circumstances it is held by the Hon'ble High Court of Gujarat that the company was continuing in dubious contract labour system.

62. In the present case, basic ground that there is relationship of employer and employee between Party II and workmen (Party I) pressed into service by Party I to prove that the contracts in dispute are sham and bogus, is not proved by Party I. Once such relationship is not proved, in my opinion, the Party I is not entitled to challenge nature of the contracts in dispute. Further, it is also not proved that the gardening and cleaning works which the workmen (Party I) were doing, was integral part of Party I. Facts of the above reported case of Ahmedabad Electricity Co. Ltd., are totally different

from that of the present one. This reported case is not applicable here.

63. Learned Advocate of Party I pointed out in his argument that, contract for period from 1-1-2000 to 31-12-2000 entered into between Party II and Party II(a) has taken place on 3-1-2002, contracts for the periods from 1-1-2001 to 31-12-2001, and from 1-1-2002 to 31-12-2002 entered into between Party II and Party II(b) have taken place on 9-1-2001 and 6-1-2002 respectively. According to him, in the natural course of human conduct if there were real and genuine contracts then the contracts will have to be taken place prior to or on the date of beginning of the contracts, and therefore, the contracts in dispute cannot be said to be genuine. He relied upon decision given by the Hon'ble High Court of Gujarat in case of Ahmedabad Electricity Co. Ltd., reported in 1998 II CLR 820. In this reported case, work orders were coming into existence after the dates of the work orders and therefore it is held that, this fact creates doubt about genuiness of the contract.

64. Position so far it relates to the periods and dates of existence of contracts pointed out by learned Advocate is there. First contract for period from 1-1-2000 to 31-12-2000 entered into between Party II and Party II(a) is dated 3-1-2002. Second contract for period from 1-1-2001 to 31-12-2001 entered into between these two parties is dated 1-1-2001.

First contract for period from 1-1-2001 to 31-12-2001 entered into between Party II and Party II(b) is dated 9-1-2001. Second contract for period from 1-1-2002 to 31-12-2002 entered into between these two parties is dated 6-1-2002.

Second contract for period from 1-1-2001 to 31-12-2001 entered into between Party II and Party II(a) came into existence on the date of commencement of this contract. Contract entered into between Party II and Party II(b) came in existence within reasonable time from dates of commencement. Question is only in respect of the first contract for period from 1-1-2000 to 31-12-2000 entered into between Party II and Party II(a). This contract came into existence after two years from date of its commencement. Learned Advocate of Party II explained that renewal can be retrospective, and therefore, even though the contract dated 3-1-2002 came into existence after considerable length of time from the date of its commencement, according to him, it cannot be said that the contract is doubtful. I do not agree with him. No explanation is forthcoming in evidence led by Party II, nor learned Advocate tried to get it especially from the witnesses Rataboli and Cardozo examined by Party II. The contract dated 3-1-2002 certainly creates doubt about its genuiness. The contract which is entered into to deprive the workers of benefits under various beneficial legislations can be said to be sham and bogus. The contract dated 3-1-2002 does not reveal that it is entered into with such intention. Moreover, there is second contract for period from 1-1-2001 to 31-12-2001 which came into existence on the very day of its commencement. I, therefore, do not agree with argument advanced by learned Advocate of Party I.

65. The Hon'ble Supreme Court held in case of Ghatge and Patil Concern's Employees Union v/s Ghatge-Patil (Transports) Pvt. Ltd., and another, reported in 1968 1 LLJ 566, relied upon by learned Advocate of Party II that there does not appear to be any bar in law to the introduction of the new contract system.

66. The "contract labour" has been defined in Section 2(1)(b) of Contract Labour (Regulation and Abolition) Act, 1970 to mean a workman who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of principal employer. Section 2(1)(c) defines "contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contract. In the present case, the workmen were engaged by their respective contractors to do gardening and cleaning work of establishment i.e. of Party II. Therefore, it was contract labour system which was introduced by Party II. In other words the contractors had been interposed on the ground of having undertaken to produce any given result for the establishment and not for supply of contract labour for work of the establishment i.e. Party II. The contracts do not reveal to be with intention to evade compliance with various beneficial legislations so as to deprive the workers of benefits thereunder. In view of these reasons and above discussions, I come to irresistible conclusion that the contracts in dispute are not sham and bogus contracts. My answer to the issue is in negative.

67. *Issue No. 3:-* The Party I is claiming for absorption or regularization of the workmen in services of the Party II mainly on two grounds: (1) that, the workmen are employees of the principal employer i.e. of Party II, and (2) the contracts entered into by Party II with Party II(a) on one hand and with Party II(b) on the other, whereunder the workmen are treated as contract labour, are sham and bogus.

68. In case of the Standard Vacuum Refining Co. of India Ltd., Appellant v/s Their Workmen and another, Respondents, reported in AIR 1960 Supreme Court 948, work of cleaning, maintenance of refinery (Plant and Premises) was given to contractors. A dispute was raised by workmen of the company with respect to contract labour employed by the Company. The workmen claimed for absorption in regular service of the company. The Hon'ble Supreme Court held that there was industrial dispute between parties, and that, Industrial Tribunal can issue in proper cases, direction to abolish contract system.

69. It should be noted that the Contract Labour (Regulation & Abolition) Act came into force in the year 1970. The Hon'ble Supreme Court held in case of R. K. Panda and others, petitioners v/s Steel Authority of India and other, Respondents, reported in 1994 II CLR 402, that the said Act, 1970 is enacted to regulate employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Decision given by Hon'ble Supreme Court in case of Standard Vacuum Refining Co. of India Ltd., is prior to coming the said Act of 1970 in force. Under this circumstance, with respect, I am of the opining that it will not be correct to make the decision applicable to present case.

70. The Hon'ble Supreme Court in case of R. K. Panda, referred to above, gave directions to absorb the petitioners as per details in para 8 of the judgment. In this reported case, according to Petitioners, they had been employed by the respondent through various contractors. They were doing jobs which are perennial in nature and identical to jobs which were being done by regular employees. The contractors used to be changed. But while awarding the contract one of the terms incorporated in the agreement was that "the incoming contractors shall employ the workers of the respective outgoing contractors subject to requirement of the job. These facts are also clearly distinguishable from that of the present one. With respect, I am of opinion that this decision is also not applicable to the present case.

71. In case of Steel Authority of India Ltd., v/s National Union Waterfront Workers and others reported in (2001) 7 SCC 1, the Hon'ble Supreme Court held in para Nos. 125 (5) and (6) of the judgment that:

5) *On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise in an industrial dispute brought before it by any contract labour in regard to condition of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.*

6) *If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if other wise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than the technical qualifications.*

72. In present case appropriate Government i.e. Government of Goa did not issue prohibition notification as provided under Section 10(1) of the said Act, 1970. It follows that the Party II was not prohibited to introduce Contract Labour System. The workmen (Party I) did not succeed in proving the main two grounds on which they have claimed for absorption/regularization in service of Party II with consequential benefits on par of permanent employees of Party II. I, therefore, answer the issue in negative.

73. *Issue No. 4:* Section 2(3) of the said Act, 1947 lays down that 'Employer' means —

i) *in relation to any industry carried on by or under the authority of any department of (the Central Government or a State Government), the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*

ii) *in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority.*

"Section 2(k) of the said Act, 1947 lays down that:-

> *"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;*

Relevant portion of Section 2(s) of the said Act, 1947, lays down that:

> *"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial*

dispute, includes any such person who has been dismissed, discharged or retrenched in connection, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

74. The Party II is the industry as defined under Section 2(j) of the said Act, 1947. It is carrying on business of manufacturing dyes, pharmaceuticals and chemicals etc. It is the employer as defined under Section 2(g)(ii) of the said Act, 1947. Though the workmen (Party I) were employed by their respective contractors for gardening and cleaning works which are not integral parts of Party II, they were employed to do manual work in the industry. Therefore, the workmen become employees within the meaning of Section 2(s) of the said Act, 1947.

75. The dispute raised by the workmen (Party I) is between the workmen and employer and it is connected with the employment, or non-employment or with conditions of labour. Therefore, it is the industrial dispute as defined under Section 2(k) of the said Act, 1947. It will not be correct to hold that only because the workmen (Party I) are not employees of Party II, there is no industrial dispute between the two. I do not agree with stand taken by the Party II. My answer to the issue is in the negative.

76. *Issue No. 5:* The contracts which were lastly entered into between Party II and Party II(a), on one hand, and between Party II and Party II(b) on the other, are terminated w.e.f. 31-12-2002. The contracts are not renewed. Services of the workmen doing gardening and cleaning works, respectively, are also terminated by their respective contractors w.e.f. the said date.

77. At the time of raising dispute on 1-10-2002 before Secretary, Department of Labour and Industries, Government of Goa, the workmen were in service. Pursuant to the dispute, the reference is made to the Industrial Tribunal by the Government under Section 10(1)(d) of the said Act, 1947. Workmen are terminated from service after the dispute was raised. For the purpose of any proceeding under the said Act, 1947, in relation to an industrial dispute, the workman includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute. Termination of services of the workmen (Party I) is in connection with that dispute. Therefore, and in view of finding given to issue No. 4, I hold that even though contracts are terminated and the workmen are not in employment of Party II(a), and Party II(b), the reference is maintainable. I do not agree with objection taken by the Party II, to maintainability of the reference. I answer the issue in the negative.

78. *Issue No. 6:* Party II(a) and Party II(b) raised contentions in para No. 1(a), 1(b) and 1(d) to 1(i) of their respective written statements that the reference is not maintainable on following grounds:

1(a) that, there is no industrial dispute between Party II and Party II(a) on one hand and between Party II and Party II(b) on the other;

1(b) that, no dispute was raised by Party II with Party II(a) and Party II(b) no demand was made by or on behalf of workmen to Party II(a) and Party II(b);

1(d) that the reference is without application of mind and/on irrational grounds;

1(e) that, there were no subsisting contracts on the date of reference, services of the workmen are terminated before date to reference;

1(f) that, this Tribunal has no jurisdiction to entertain and decide reference against Party II(a) and Party II(b);

1(g) that, the purported dispute is barred by inordinate delay and latches;

1(h) that, the statement of claim is not signed by competent person; and

(i) that the claim statement is not properly verified.

79. It is proved that there is industrial dispute between workmen (Party I) and Party II. The workmen did not raise industrial dispute against Party II(a) and Party II(b) because they are claiming to be direct employees of Party II. The question as to whether there is no industrial dispute between Party II and Party II(a) on one hand, and between Party II and Party II(b) on the other is of no consequence for maintainability of the reference.

80. Workmen (Party I) raised dispute mainly against Party II which is an industry. Facts that the Party II did not raise dispute with Party II(a) or with Party II(b), and that, there was no demand by or on behalf of workmen to Party II(a) and Party II(b) are not material for maintainability of reference.

81. The Party II(a) or Party II(b) did not prove how the reference is without application of mind and as to how it is based on irrational grounds. Nobody on behalf of these two parties stepped in to witness box. Facts and circumstances do clearly reveal that the reference is not of such nature.

82. I have already held that the reference is maintainable even though the contracts and services of the workmen are terminated before the date of reference. Therefore, the ground raised in para No. 1(e) of the Written Statement does not survive.

83. The reference is made by appropriate Government as per provisions contained in Section 10(1)(d) of the said Act, 1947, to this Industrial Tribunal for adjudication. On such reference, as per provisions of Section 15 of the said Act, the Industrial Tribunal has to hold its proceeding expeditiously and to submit

its award to the appropriate Government. So, the plea that this Tribunal has no jurisdiction to entertain and to decide the reference is devoid of merits and as such it must fall to ground.

84. The Mumbai Mazdoor Sabha raised dispute before the Secretary, Department of Labour and Industries, Government of Goa on behalf of workmen on 1-10-2002, which is within 13 days from order dated 18-9-2002 passed by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 34/97. The dispute is raised within time limit given by the Hon'ble High Court. It cannot be said that there is inordinate delay in raising the dispute.

85. The Claim Statement is signed and verified by R. V. Joshi, witness No. 1 of Party I, as Local General Secretary of Mumbai Mazdoor Sabha which is representing the workmen. He is member of the executive or an office bearer of the registered trade union of which workmen are members. He is competent person to sign the Claim Statement. The Claim Statement is also properly verified by him. It is well settled position that the rules of pleading are not strictly applicable to proceeding under the said Act, 1947. So, even for the sake of argument assuming that there is no proper verification that cannot be a sufficient ground to hold that the reference is not maintainable. In view of this reason and above discussion, I do not accept grounds raised by Party II(a) and Party II(b) and which are reproduced above to prove that the reference is not maintainable. My answer to the issue is in negative.

86. *Issue No. 7:* As a result of findings given to issues Nos. 2 and 3, I answer the issue in negative which lead to adjudication of the reference with the same fate. With this I proceed to adjudicate the reference by passing order as follows:-

ORDER

1. The demand of Mumbai Mazdoor Sabha on behalf of workmen listed in Annexure to order of reference dated 7-3-2003 on the ground that contract between M/s. Syngenta India Ltd., and M/s. Safe (X) and M/s. Super Services is sham and bogus, for extension of appropriate relief of either absorption or regularization with consequential benefits, is not legal and justified.

2. The workmen are not entitled to any of the relief's claimed by the Union Mumbai Mazdoor Sabha, on their behalf.

3. No order as to costs.

4. The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-Cum-
-Labour Court-I.

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